

STATE OF MICHIGAN JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	ORDER AFTER PRETRIAL HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 1 ORDER ____ OF ____	CASE NO. PETITION NO.
Court address		Court telephone no.

1. In the matter of
name(s), alias(es), DOB

2. Date of hearing: _____ Judge/Referee: _____ Bar no.

☐ 3. Removal date: **A** _____ (specify for each child if different)

THE COURT FINDS that:

4. The child(ren) ☐ is/are ☐ is/are not subject to the continuing jurisdiction of another court. Court: **B** _____

5. A petition has been submitted alleging that the above child(ren) come(s) within the provisions of MCL 712A.2(b).

6. ☐ Notice of hearing was given as required by law. ☐ Notice of proceedings is to be given as required by law.

7. The lawyer-guardian ad litem ☐ has ☐ has not complied with the requirements of MCL 712A.17d. **D**

8. ☐ a. There is probable cause to believe the legal/putative father(s) is/are: (name each child, his/her father, and whether legal or putative)

☐ b. The putative father of _____ is unknown and cannot be identified.

☐ c. The natural father was notified as required by law and failed to establish paternity within the time set by the court. The natural father waives all rights to further notice, including the right to notice of termination of parental rights and the right to an attorney.

F ☐ 9. ☐ a. Contrary to the welfare findings were made in a prior order.

☐ b. It is contrary to the welfare of the child(ren) to remain in the home because: (attach separate sheets as necessary)

G ☐ 10. ☐ a. Reasonable efforts to prevent removal of the child(ren) from the home were made as determined in a prior order.

☐ b. Reasonable efforts were made to prevent removal of the child(ren) from the home. Those efforts include: (specify)

☐ c. Reasonable efforts to prevent removal of the child(ren) from the home were not made.

(SEE SECOND PAGE)

Do not write below this line - For court use only

STATE OF MICHIGAN JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	ORDER AFTER PRETRIAL HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 2 ORDER ____ OF ____	CASE NO. PETITION NO.
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In the matter of

- H** ☐ 11. a. Reasonable efforts are not required to prevent the child(ren)'s removal from the home due to
☐ the ☐ mother's ☐ father's subjecting the child(ren) to the aggravated circumstance(s) of _____ as provided in section MCL 722.638(1) and (2), and as evidenced by _____.
- ☐ the ☐ mother's ☐ father's conviction for murder of another child of the parent.
☐ the ☐ mother's ☐ father's conviction for voluntary manslaughter of another child of the parent.
☐ the ☐ mother's ☐ father's conviction for aiding or abetting in the murder or manslaughter of another child of the parent, attempting to murder the child(ren) or another child of the parent, or conspiring or soliciting to commit the murder of the child(ren) or another child of the parent.
☐ the ☐ mother's ☐ father's conviction for felony assault that resulted in serious bodily injury to the child(ren) or another child of the parent.
☐ the ☐ mother's ☐ father's involuntary termination of parental rights to a sibling of the child(ren).
- b. Reasonable efforts to preserve and reunify the family to make it possible for the child(ren) to safely return home are
☐ not required because the parent subjected the child or another child of the parent to one of the circumstances stated above.
- OR**
☐ still recommended because:

(when item 11 is checked, either complete item 13 below or schedule a permanency planning hearing within 30 days of this determination)

- I** ☐ 12. ☐ a. Reasonable efforts shall be made to preserve and reunify the family to make it possible for the child(ren) to safely return home.
☐ b. Reasonable efforts shall not be made to preserve and reunify the family because it would be detrimental to the child(ren)'s health and safety.
- J** ☐ 13. Since reasonable efforts to prevent removal or to reunite the child(ren) and family are not required, a permanency planning hearing was conducted. (**use and attach form JC 64**, Order Following Permanency Planning Hearing, Pre-Termination)
- K** 14. Conditions of custody in the home and with the individual with whom the child(ren) reside(s)
☐ a. are adequate to safeguard the child(ren) from the risk of harm to the child(ren)'s life, physical health, and mental well-being.
☐ b. are not adequate to safeguard the child(ren) from the risk of harm to the child(ren)'s life, physical health, and mental well-being.
☐ No provision of service or other arrangement except removal of the child(ren) is reasonably available to adequately safeguard the child(ren) from the risk of harm to the child(ren)'s life, physical health, and mental well-being.
☐ Conditions of custody at the placement away from the home and with the individual with whom the child(ren) is/are placed are adequate to safeguard the child(ren)'s life, physical health, and mental well-being.
- L** ☐ 15. Parenting time with _____, even if supervised, may be harmful to the child(ren).

(SEE THIRD PAGE)

STATE OF MICHIGAN JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	ORDER AFTER PRETRIAL HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 3 ORDER ____ OF ____	CASE NO. PETITION NO.
Court address		Court telephone no.

In the matter of

IT IS ORDERED:

M ☐ 16. Notice is to be given to the legal/putative father(s) as required by law. ☐ The father was not present and must appear at the next hearing. ☐ The putative father was present at this hearing and shall establish paternity within 14 days.

N 17. The child(ren)

- ☐ is/are placed with the Department of Human Services for care and supervision, and
- a. the parent(s), guardian, or legal custodian shall execute all documents necessary to release confidential information regarding the child(ren) including medical, mental, and educational reports, and shall also, within 7 days, provide the Department of Human Services with the name(s) and address(es) of the medical provider(s) for the child(ren). Any medical provider for the child(ren) shall release the medical records of the child(ren) to the Department of Human Services.
 - b. if the child(ren) is/are placed in the home of a relative, a home study shall be performed by the Department of Human Services and a copy of the home study submitted to the court not more than 30 days after the placement.
 - c. upon request, the Department of Human Services shall release to the foster parent the information concerning the child(ren) in accordance with MCL 712A.13a(13).

☐ remain home with or is/are released to _____ under the supervision of
 Name of parent, guardian, or legal custodian
 the Department of Human Services. ☐ The following terms and conditions apply to the parent/guardian/legal custodian:

O ☐ 18. Each child shall have ☐ a psychological evaluation ☐ counseling to determine appropriateness and conditions of parenting time.

P ☐ 19. Parenting time of _____ is
☐ supervised by the Department of Human Services and/or its designee.
☐ unsupervised at the discretion of the Department of Human Services.
☐ suspended while psychological evaluation or counseling is conducted, or until further order of the court.

P ☐ 20. Parenting time of _____ is
☐ supervised by the Department of Human Services and/or its designee.
☐ unsupervised at the discretion of the Department of Human Services.
☐ suspended while psychological evaluation or counseling is conducted, or until further order of the court.

P ☐ 21. Parenting time of _____ is
☐ supervised by the Department of Human Services and/or its designee.
☐ unsupervised at the discretion of the Department of Human Services.
☐ suspended while psychological evaluation or counseling is conducted, or until further order of the court.

22. Placement shall continue pending ☐ resumption of the pretrial ☐ trial ☐ disposition

on _____
 Date and time

☐ 23. Other: (include orders regarding discovery, scheduling orders, etc.)

Date

Judge

MCL 722.638 - AGGRAVATED CIRCUMSTANCES

- (1) The Department shall submit a petition for authorization by the court under Section 2(b) of Chapter XIA of 1939 PA 288, MCL 712A.2, if one or more of the following apply:
 - (a) The Department determines that a parent, guardian, or legal custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included one or more of the following:
 - (i) Abandonment of a young child.
 - (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
 - (iii) Battering, torture, or other severe physical abuse.
 - (iv) Loss or serious impairment of an organ or limb.
 - (v) Life threatening injury.
 - (vi) Murder or attempted murder.
 - (b) The Department determines that there is risk of harm to the child and either of the following is true:
 - (i) The parent's rights to another child were terminated as a result of proceedings under Section 2(b) of Chapter XIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.
 - (ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under Section 2(b) of Chapter XIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.
- (2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the Department of Human Services shall include a request for termination of parental rights at the initial dispositional hearing as authorized under Section 19b of Chapter XIA of 1939 PA 288, MCL 712A.19b.

Instructions for Using JC 11b

This is a new form to be used whether children remain in the home or are removed from the home. A pretrial hearing is allowed pursuant to MCR 3.922, but is not required. Many courts do not use a pretrial hearing, but for those courts that do, this new form is designed to help them make the appropriate findings when a child has been removed from the home, especially when “contrary to the welfare” findings were made at the preliminary hearing but the court was unable to make “reasonable efforts to prevent removal” findings at that time. “Reasonable efforts” findings must be made within 60 days of the child’s removal to make the child eligible for Title IV-E funding. Since there is no scheduled hearing before trial, and trial may not be scheduled before the 60 days elapses, holding a pretrial is the perfect time for a court to make “reasonable efforts” findings.

- A** 3. The removal date is key, rather than the date the petition was filed. The removal date is prominently placed to make it clear when subsequent review hearings must occur.
- B** 4. MCR 3.927 requires (pursuant to MCR 3.205) notice to courts with continuing jurisdiction over a minor. The court with continuing jurisdiction is then required to provide copies of orders entered in the prior proceedings.
- C** 7. MCL 712A.17d requires the lawyer-guardian ad litem (L-GAL) to meet with or observe the child before a pretrial hearing. This new provision requires the court to determine whether such contact or observation occurred. L-GALs are required to meet with or observe the child in the following instances:
 - a. Before the pretrial hearing
 - b. Before the initial disposition, if held more than 91 days after the petition has been authorized
 - c. Before a dispositional review hearing
 - d. Before a permanency planning hearing
 - e. Before a post-termination review hearing
 - f. At least once during the pendency of a supplemental petition
 - g. At other time as ordered by the court

Adjourned or continued hearings do not require additional visits unless ordered by the court, and the court may also order alternative means of contact with the child if good cause is shown on the record to do so.

- D** 8. MCR 3.921(C) sets out the rights and responsibilities of alleged putative fathers. MCR 3.921(C)(1) allows a court to take initial testimony on the tentative identity and address of a natural father, and find probable cause to believe that person is the father, which then confers notice requirements. This is reflected in item 8a.

Item 8b allows the court to make a finding that the putative father is unknown, which initiates the alternative notification provisions of the rule. The notice (whether by service or otherwise as ordered by the court) then allows the court to subsequently hold a hearing pursuant to MCR 3.921(C)(2) that requires a putative father to establish a legal relationship to the child.

Instructions for Using JC 11b (continued)

Item 8c allows the court to find that notice was already given to a putative father, who failed to establish paternity within the time set by the court. Making this finding allows the court to terminate the putative father's parental rights without further notice, and allows the court to refuse to appoint an attorney for the putative father.

Identifying putative fathers and requiring an alleged putative father to establish paternity must occur at the earliest possible moment in a proceeding. Please refer to the *Absent Parent Protocol* for ways to identify fathers and establish paternity early in the case.

- E** 9. This item relates to the “contrary to the welfare” finding a court must make to authorize placement outside the home. Federal regulations require such a finding in the first court order authorizing removal from the home for the case to be eligible for federal funding. 45 CFR 1356.21. MCR 3.965(C)(3) requires that “[i]f placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home.”

This language is designed to alert anyone reading the order that if a child is removed from the home, one of the check boxes regarding “contrary to the welfare” findings must be checked. If the findings were made previously at the time the court authorized the child's removal (form JC 05b or JC 11a), check item 9a. If they were not made previously, and the court is authorizing the child's removal from the home at this time, the findings must be made at this hearing and item 9b must be checked. If the child's removal was authorized in an earlier court order (form JC 05b or JC 11a) and the “contrary to the welfare” findings were not made at that time, checking the box in 9b and inserting case-specific facts about why it is contrary to the child's welfare to remain in the home will not make the child eligible for funding under Title IV-E. Those findings must be made at the point at which the child is removed, not subsequently.

- F** 10. The check box before the number alerts the judge or referee that “reasonable efforts to prevent removal” findings are optional here either because item 11 can be checked instead or because the children have not been removed from the home. If this form is used because the court cannot conduct the trial within the 60 day time limit from the removal date for making “reasonable efforts” findings to comply with MCR 3.965(D)(1) and to ensure federal funding for Title IV-E eligible children, either item 10 or item 11 must be checked. The options regarding “reasonable efforts” are that: 1) they were made in a prior order, 2) they are being made in this order, or 3) they were not made (as part of a prior order or for present purposes). If the court finds “reasonable efforts to prevent removal findings” were not required, those findings are incorporated in a separate provision at item 11.

- G** 11. The check box before the number alerts the judge or referee that these findings are optional here either because item 10 can be checked instead or because the children have not been removed from the home. This provision specifically addresses the situation in which reasonable efforts to prevent removal are **not** required to be made when children have been or are being removed from the home. It also incorporates findings regarding the fact that reasonable efforts to reunify the family are **not** required or are still recommended.

Instructions for Using JC 11b (continued)

Courts are allowed to find that reasonable efforts to prevent removal are not required because the offense fits within specific federal and state exemptions to the “reasonable efforts” requirement. See MCR 3.965(D)(2); 45 CFR 1256.21(b)(3). The offenses for which a court can find that reasonable efforts to prevent removal are not required include both aggravated circumstances as defined by Michigan’s Child Protection Law (MCL 722.638) as well as specific situations listed in the federal regulations. The aggravated circumstances included in our state law are set forth for the court’s convenience on page 4 of the form, and the federal regulations allowing for no “reasonable efforts” finding are listed in this provision. Keep in mind that finding reasonable efforts are not required *triggers the requirement that a permanency planning hearing be held within 30 days*. 45 CFR 1256.21(h)(2).

State statutes also require reasonable efforts to preserve and reunify the family unless there are aggravated circumstances. MCL 712A.19a(2). Further, the statute states that if there is a judicial determination that reasonable efforts to reunite the child and family are not required, the court must hold a permanency planning hearing within 30 days. Thus, a permanency planning hearing must be held within 30 days of a judicial determination that reasonable efforts to prevent removal or to preserve and reunify the family are not required. There is also an option in this section of the form to allow the court to require reasonable efforts to preserve and reunify the family continue, if the court finds it appropriate to do so.

- H** 12. If children have not been removed from the home or item 11 is checked, the court need not make findings regarding “reasonable efforts to preserve and reunify”. Therefore, this entire item is optional. If, however, children are removed from the home and the court is making reasonable efforts findings at the pretrial hearing and item 11 is not checked, one of the options in this item must be checked because federal law regulations require that “reasonable efforts” to preserve and reunify the family, except when not required, must be made whenever a child is removed from the home. The options are that reasonable efforts to preserve and reunify shall be made or reasonable efforts to preserve and reunify shall not be made because it would be detrimental to the child(ren)’s health and safety.
- I** 13. Another option following the pretrial is holding a permanency planning hearing. Item 13 is designed to be used by courts that hold a permanency planning hearing immediately after a pretrial at which it found that reasonable efforts to prevent removal and to reunify the family are not required. The use note makes it clear that JC 64 should also be used in this situation. Notice requirements must still be met (or a signed waiver of notice completed by the respondent[s]) if the court intends to hold a permanency planning hearing immediately after the pretrial.
- J** 14. MCL 712A.13a(5) requires that if a petition alleges abuse by a parent, guardian, legal custodian, nonparent adult, or other person residing in a child’s home, regardless of whether the court orders the alleged abuser to leave the child’s home, the court shall not leave the child in or return the child to the child’s home or place the child with a person unless the court finds that “the conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from the risk of harm to the child’s life, physical health, or mental well-being” Since a child has already been removed in a previous order or is being removed at this point, it is presumed that abuse has been alleged in the petition. Therefore, either a. or b, of this item must be checked.

Instructions for Using JC 11b (continued)

- K** 15. MCL 712A.13a requires this finding if a court wants to order a psychological evaluation or counseling for the child. That statute also allows a court to suspend parenting time while the evaluation or counseling continues.
- L** 16. This provision includes the choices a court may make regarding putative fathers.
- M** 17. This provision includes options for either placement with DHS for care and supervision (required for Title IV-E eligibility), or for a child to remain home or be returned home under supervision of DHS and with optional terms and conditions a court may order.
- N** 18. This is the order provision for psychological evaluation or counseling for the child regarding parenting time (the finding in item 18 must be made to order the evaluation or counseling in this section).
- O** 19-21. These identical parenting time provisions allow the court to order parenting time (supervised or unsupervised) or to suspend parenting time while the child undergoes the psychological evaluation or counseling ordered in item 15 of this form. And while MCL 712A.19b(4) and MCR 3.977(D) require that parenting time be suspended in cases in which a petition to terminate parental rights is filed, the court can order parenting time if the parent establishes, and the court determines, that the parenting time will not harm the child. If the parent cannot establish, or the court does not determine that allowing parenting time will not harm the child, the statute requires parenting time to remain suspended until the termination petition is adjudicated or the issue is settled.

Three separate parenting time provisions are included to accommodate different parenting time schedules, but if parenting time is the same for all parties, only one item need be filled out.
- P** 22. This item specifically states when the resumed pretrial, trial or disposition is scheduled. There is no check box, so courts will be required to fill in a specific date and time. This is designed to help keep courts moving proceedings along in a timely manner.